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We called attention in a recent issue to a decision by Vice-Chancellor Green, of the New Jersey Court of Chancery, restraining a labor organization from distributing boycotting literature (40 Cent. L. J. 21). The case was not reported at the time and so we failed to state the title. It is Barr v. Essex Trades Council and may be found reported in full in 30 Atl. Rep. 881. In addition to the point alluded to by us, the court held that malicious injury to a person's business is actionable and that an injury to the business of another is malicious and actionable if done intentionally and without legal excuse.

Another late case of interest on the general subject of the legal rights of capital and labor is Longshore Printing & Pub. Co. v. Howell, 38 Pac. Rep. 547. The points there decided, succinctly stated, are as follows: That a strike is not illegal *per se*; that where a trades union seeks by fair means to compel an employer of its members to observe one of its lawful rules, it cannot be restrained therefrom upon the ground that its object in enforcing the rule is to create a monopoly of labor in that particular trade; that a statute which makes it a misdemeanor for one by force, threats, or intimidation to prevent an employee from continuing or performing his work, does not make it unlawful for a trades union, by resolution or order of its executive committee, to require its members, under pain of suspension or expulsion from the union, to quit a person's employ because of his violation of a lawful rule of the union; that a conspiracy to injure or destroy a person's business or property is wrongful *per se*, although not indictable under the statute; and that where persons conspire to injure or destroy another's business or property, and it clearly appears that the injury is threatened and imminent and will be irreparable, injunction will lie to restrain the conspirators.

The recent decision of the Supreme Court of the United States in the case of the Bate Refrigerator Company v. Sulzberger *et al.*, establishes the very important principle that any American patent expires with the term of any prior foreign patent on the same device, whether the application is filed before the issue of the foreign patent or not. The effect of this decision is to vacate a multitude of existing patents. The importance of the decision is not confined to the particular case in which it was rendered, between the General Electrical Company and the American Bell Telephone Company on the one side, and the Westinghouse Electric and the Anti-Bell Telephone companies on the other, but also disposes of a large number of other patents which the public had assumed to have expired under the rulings of the lower courts, but which would have been revived if the decision of the Supreme Court, in this case, had been the other way, and it also shortens the life of a great many patents which have not yet actually expired. The facts in the case, as appears from the statement certified to the Supreme Court from the Circuit Court of Appeals for the Second Circuit, were as follows: On December 1st, 1876, John J. Bate made application to the United States for letters patent for an improvement in processes for preserving meats during storage and transportation. Pending this application two foreign patents were granted for the Bate invention—one, for the term of fourteen years, by the British government to William Robert Blake, on a communication from Bate, under date of January 29, 1877, which patent was sealed July 13, 1877, and the complete specifications of which were filed July 26, 1877; the other for the term of five years, by the government of the Dominion of Canada, to Bate himself, under date of January 9, 1877. After these foreign patents were issued, namely, on the 20th day of November, 1877, Bate received a patent from the United States, expressed to be for the term of seventeen years, and assigned it to the Bate Refrigerating Company, the plaintiff in this suit. The suit before the court was brought by that company July 25, 1892, for an injunction against the infringement of the American patent, and also for an accounting. It was set down for hearing in the Circuit Court on pleas to the bill, and a decree was passed dismissing the suit. From that decree an appeal was taken. Both foreign patents for the Bate invention having expired before the expira-

tion of the seventeen years specified in the United States patents, the questions arose whether the invention for which the patent from the United States was issued had been "previously patented in a foreign country," within the meaning of these words in section 4887 of the Revised Statutes, and whether the American patent expired under the terms of that section before the expiration of seventeen years from its date.

The court, by its decision, has answered both these questions in the affirmative. The precise point at issue was defined by the respective counsel in this way: The plaintiff contended that under a proper construction of the statutes an invention patented or caused to be patented in a foreign country before being patented in this country should not be deemed to have been "previously patented in a foreign country" unless the foreign patent was issued prior to the application for the American patent, while defendants contended that the respective dates of the American and foreign patents, and not the date of the American application, determined the question whether an invention, patented here, had been "previously patented in a foreign country."

NOTES OF RECENT DECISIONS.

PARENT AND CHILD — MAINTENANCE OF STEPCHILDREN BY HUSBAND.—A man is not bound to maintain the children of his wife by a former marriage, but if he chooses to receive them into his family, and to assume the relation of a parent to them in their daily life, the law will not imply a contract on his part to pay them for services which they render him while members of his family, nor a contract on their part to pay him for their maintenance. The Supreme Judicial Court of Massachusetts in Livingston v. Hammond, 38 N. E. Rep. 968, citing a list of authorities from many of the States, reaffirms the foregoing doctrine. The law approves and encourages the assumption of such a relation, as promotive of the best interests of all parties, by uniting them in an orderly family life, says the court. If nothing more appears than helpfulness in such relations, the law will not permit an implication of a contract to make compensation in money on either side. It will presume that what was done proceeded from a higher attribute of human nature than the desire to bargain and get gain, namely, an unselfish love of a parent for his children, and of the children for their parent. Of course, there may be circumstances in any case which will rebut the ordinary presumption from the residence together in the same family of persons so related, and will call for an inference that the stepfather was not acting *in loco parentis*, but in a different relation.

CONTRACT FOR LOBBYING SERVICES—VALIDITY—PUBLIC POLICY.—In Houlton v. Dunn, 61 N. W. Rep. 898, before the Supreme Court of Minnesota, it appeared that the plaintiff agreed with defendant to locate him upon a valuable quarter section of pine land, which had been long withdrawn from market for railroad purposes, and to instruct him as to what he should do as such settler, and do all that was necessary or could be done to bring the land into the market, and enable the defendant to acquire title thereto under the homestead or pre-emption laws of the United States. In pursuance and performance of this agreement, the plaintiff attended several sessions of congress, and appeared before the secretary of the interior and the committees of the senate and house of representatives, and employed counsel to urge the passage of a bill declaring said lands forfeited to the government, and providing that parties who had settled on the land in good faith should have the preference to enter the same under the homestead laws, when the same should be restored to the market. For such services the defendant agreed to pay plaintiff when he (defendant) should acquire the right to make final proof for such land. It was held that the contract was void, as against public policy. The court said *inter alia:*

The question here involved is a very important one, and we regret that we did not have the benefit of an oral argument by the very able counsel for the plaintiff. If there were services rendered and expenditures incurred by the plaintiff for the defendant, as he alleges, entirely disconnected with the services rendered in procuring congressional legislation, they would constitute a good cause of action; but, unfortunately for the plaintiff, he has included the value of the whole services and expenditures in one lump sum, and seemingly as though the contract was entire. Evidently, the court below so treated the transaction; and, for a perusal of the pleadings, we do not see that it could have done otherwise. See

Trist v. Child, 21 Wall. 441. The courts hold that there are two kinds of agreements relative to the matter of procuring legislation from our State and national legislatures and our municipal bodies, boards, or officers. One is the evil and mischievous agreement which tends to corrupt the law-making power, and is accomplished sometimes by subtle acts of personal importunity and intrigue, or by secret and insidious overtures, while at other times corrupt results are reached by startling boldness and daring. Some of the authorities which refuse to enforce this kind of agreement are as follows: Clippinger v. Hepbaugh, 5 Watts & S. 315; Harris v. Roof, 10 Barb. 489; Rose v. Truax, 21 Barb. 361; Mills v. Mills, 36 Barb. 474; Trist v. Child, 21 Wall. 441; Spaulding v. Ewing, 149 Pa. St. 375, 24 Atl. Rep. 219; Oscanyan v. Arms Co., 103 U. S. 261-274; Tool Co. v. Norris, 2 Wall. 45; Woodstock Iron Co. v. Richmond & D. Extension Co., 129 U. S. 643,9 Sup. Ct. Rep. 402. In the case of Clippinger v. Hepbaugh, 5 Watts. & S. 315, it was said by the court: "It matters not that nothing improper was done, or was expected to be done, by the plaintiff. It is enough that such is the tendency of the contract; that it is contrary to sound morality and public policy, leading necessarily, in the hands of designing and corrupt men, to improper tampering with members, and the use of an extraneous, secret influence over an important branch of government. It may not corrupt all, but if it corrupts or tends to corrupt some, or if it deceives or tends to deceive or mislead some, that is sufficient to stamp its character with the seal of reprobation before a judicial tribunal." In the case of Rose v. Traux, 21 Barb. 361, the agreement was "to use his influence, efforts, and labor in procuring the passage of a law by the legislature;" and the agreement was held void, as against public policy, and that, as the contract was entire, it was wholly void, and that no recovery could be had for even legitimate services performed under the agreement. In the case of Weed v. Black, 2 MacArthur, 268, the court uses the following language: "If the terms of the contract be broad enough to cover services of any kind, whether secret or open, honest or dishonest, the law pronounces a ban upon the paper itself." In the case of Tool Co. v. Norris, 2 Wall. 45, Mr. Justice Field said in reference to agreements for compensation in procuring contracts for the government: "It [such principle] has been asserted in cases relating to agreements for compensation to procure legislation. These have been uniformly declared invalid, and the decisions have not turned upon the question whether improper influences were contemplated or used, but upon the corrupting tendency of the agreement." Further along in the opinion, he says: "It is sufficient to observe generally that all agreements for pecuniary considerations to control the business operations of the government, or the regular administration of justice, or the appointments to public offices, or the ordinary course of legislation, are void, as against public policy, without reference to the question whether improper means are contemplated or used in their execution. The law looks to the general tendency of such agreements, and it closes the door to temptation, by refusing them recognition in any of the courts of the country." It will be observed that many of the decisions are based upon the corrupt tendency of such contracts, rather than the particular wording of the contract itself.

There are very eminent courts holding that contracts for the performance of services in procuring legislation can be enforced, where only fair and honorable means have been used, and especially when such legislation results in great public benefit. The plaintiff seeks to bring his services within this rule, alleging that plaintiff's services were not rendered for the benefit of any one individual, but that his services were rendered in securing the passage of a public act which restored lands to the public domain for the public benefit, to which the railroad companies had no right, It may well be doubted whether the legal effect of the passage of the law has been as alleged by plaintiff, viz: beneficial to the public at large; but we think it is plainly evident from the pleadings that it was not the public weal that concerned the plaintiff, in what he did, but to secure the passage of an act which would secure to the defendant the right to enter and pay for 160 acres of pine land for the paltry sum of $1.25 or $2.50 per acre, while the land was actually worth from $12,000 to $15,000, and for which services and expenses in so doing he was to be paid, as he claims, the sum of $3,500. [Note by the editor. See article in 38 Cent. L. J. 123, on Lobbying Contracts.]

MUNICIPAL CORPORATION — ORDINANCE—DELEGATION OF AUTHORITY—BEATING DRUMS ON STREET.—The Supreme Court of California in *In re* Flaherty, 38 Pac. Rep. 981, decide that an ordinance forbidding the beating of drums on the street, except on permit of the president of the board of trustees, which he may grant when, in his judgment, it will not conflict with the purposes of the ordinance—the promotion of the safety and security of public travel—is not void by reason of the authority given such officer to decide when permits shall be given. Harrison, De Haven, and Fitzgerald, JJ., dissent. The following is from the opinion of the court:

In dealing with this and similar questions,—such as repairs of wooden buildings within fire limits, carrying concealed weapons, using public buildings and grounds, ringing bells on building where many operatives are employed, haranguing on the streets by lectures, preachers, etc., singing or playing on musical instruments on the streets, and the like,—our federal, State, and municipal governments have always recognized the practical impossibility of providing in advance for proper exceptional cases, and the necessity of giving to a public officer some discretion in the premises; and laws and ordinances based on that principle have nearly always been upheld when subjected to judicial test. Laws are not made upon the theory of the total depravity of those who are elected to administer them; and the presumption is that municipal officers will not use these small powers villainously and for purposes of oppression and mischief. Of course, it is impossible to state in terms the extent or the limitation of what is known as the "police power;" and courts have not attempted to do it. Whether or not that power has been exceeded in particular cases must be determined as the cases arise; and to find the law applicable to a particular case we must look to see what courts have held in similar cases. And we find that statutes and ordinances similar in character to the one in question in the case at bar have been sustained in most of the cases to which our attention has been called. We will

notice a few of them. Statutes and ordinances have been sustained prohibiting awnings without the consent of the mayor and alderman (Pedrick v. Bailey, 12 Gray, 161); forbidding orations, harangues, etc., in a park, without the prior consent of the park commissioners (Com. v. Abrahams [Mass.] 30 N. E. Rep. 79), or upon the common or other grounds, except by the permission of the city government committee (Com. v. Davis [Mass.] 4 N. E Rep. 577); "beating any drum or tambourine, or making any noise with any instrument for any purpose whatever, without written permission of the president of the village" on any street or sidewalk (Vance v. Hadfield [Sup.] 4 N. Y. Supp. 112); giving the right to manufacturers and others to ring bells and blow whistles in such manner and at such hours as the board of aldermen or selectmen may in writing designate (Sawyer v. Davis, 136 Mass. 239); prohibiting the erecting or repairing of a wooden building without the permission of the board of aldermen (Hine v. City of New Haven, 40 Conn. 478); authorizing harbor masters to station vessels, and to assign to each its place (Vanderbilt v. Adams, 7 Cow. 349); forbidding the occupancy of a place on the street for a stand without the permission of the clerk of Faneuil Hall Market (*In re* Nightingale, 11 Pick. 168); forbidding the keeping of swine without a permit in writing from the board of health (Inhabitants of Quincy v. Kennard [Mass.] 24 N. E. Rep. 860); forbidding the erection of any kind of a building without a permit from the commissioners of the town through their clerk (Commissioners v. Covey [Md.] 22 Atl. Rep. 266); forbidding any person from remaining within the limits of the market more than 20 minutes unless permitted so to do by the superintendent or his deputy (Com. v. Brooks, 109 Mass. 355). In Barbier v. Connoly, 113 U. S. 27,5 Sup. Ct. Rep. 357, the Supreme Court of the United States had under consideration an ordinance which, among other things, prohibited the carrying on of the business of a laundry without certificates from the health officer and the board of fire wardens; and, while the part of the ordinance was not directly involved, that court say as follows: "In the case before us, the provisions requiring certificates from the health officer and the board of fire wardens may, in some instances, be unnecessary, and the changes to be made to meet the conditions prescribed may be burdensome; but, as we have seen, this is a matter for the determination of the municipality in the execution of its police powers, and not the violation of any substantial right of the individual." Many other authorities to the same point as those above noticed might be collected outside of the decisions in our own State. In this State it was held in *Ex parte* Casinello, 62 Cal. 538, that an ordinance giving to the superintendent of public streets the power to determine where, either on a public street or on private premises, any person could deposit "any glass, broken ware, dirt, rubbish, garbage or filth," was a salutary and valid "police regulation." In the case of Guerrero, 69 Cal. 88, 10 Pac. Rep. 261, it was held that the city council had authority to make the issuance of a license for the sale of liquors conditional upon the appellant's obtaining a permit from the board of police commissioners. In *Ex parte* Tuttle, 91 Cal. 589, 27 Pac. Rep. 933, an ordinance prohibiting the selling of pools on horse races, except within the inclosure of a race track where the race is to be run, was upheld, and it was declared not to be void because its effect might be "to confer a special privilege or benefit upon those who own or control the race courses." In *Ex parte* Fiske, 72 Cal. 125, 13 Pac. Rep. 310, an ordinance was upheld which prohibited the repair of a wooden building within certain fire limits without permission in writing signed by a majority of the fire wardens and approved by a majority of the committee on fire department and the mayor. In that case we said as follows: "It is clear, however, that a literal compliance with the regulation prohibiting the repairing of a wooden building might work, in some instances, useless hardships. The repair of a leaking roof or a broken window would be necessary to the comfort and health of a family, without enhancing the danger which the framers of the ordinance sought to provide against; and repairs of a more extensive character might be made to particular houses, standing in particular localities, without increasing the fire risks. And it is equally clear that no general rule could be established beforehand that would meet the emergencies of individual cases. Therefore the power to give relief in particular instances is conferred on certain officers; and it is not to be presumed that they will exercise it wantonly, or for purposes of profit or oppression."

In *Ex parte* Christensen, 85 Cal. 208, 24 Pac. Rep. 747, this court upheld an ordinance prohibiting the business of a retail liquor dealer unless he procured the permission of a majority of the board of police commissioners, or, upon their refusal, the permission of 12 property owners in the block. The foregoing authorities, in our opinion, clearly establish the validity of the ordinance here in question.

Counsel for petitioner rely on some cases—particularly State v. Dering, 84 Wis. 585, 54 N. W. Rep. 1104, and Frazee's Case (Mich.), 30 N. W. Rep. 72—which, at first blush, seem to conflict with the general current of authorities as above presented. But upon closer examination they will be found to go upon a distinction or principle—whether sound or not—that is not applicable to the case at bar. They are based upon the theory that the lawful inherent rights of men cannot be entirely suppressed or destroyed by statute or ordinance, but can only be regulated; and that all regulations of such rights must be uniform, etc. The cases cited all deal with ordinances regulating the right of the people to have processions or parades in the streets; and it is this right that is discussed, although the accompaniment of music is mentioned in some of the ordinances.

CORPORATE STOCK HELD AS TRUSTEE.

The presumption that every man knows the law is oftentimes a violent one, even in the case of those whose education and study has been directed to that end. How much the more a man of ordinary business attainments fails to sustain the presumption is a matter of every-day experience to the practitioner. And it sometimes happens too despite the constantly repeated assertion that law is reason, that knowledge of a condition of the law is presumed, which, to a thinking man, seems anything but reasonable, and which it would not occur even to the cautious and prudent as being the deliberate judgment of courts. Thus, men are frequently led to

take action, to their loss, governed solely by what to them seems just and reasonable in the ordinary business sense. We are led to the above reflections by reason of having brought to our attention recent litigation involving liability upon corporate stock held as trustee. A business man, representing responsible parties, known to the corporation, subscribed for a block of its stock, for the benefit of those he represents. For the convenience of all the parties the stock is issued to him thus "A. B., Trustee." This was done with the knowledge and approval of the officers of the corporation, and with notice to them as to who were the *cestui que trusts*. It would naturally occur to anyone unacquainted with the precedents, that no personal liability could on account of such stock be entailed upon the trustee. The corporation knows that he holds the stock in a representative capacity, and knows who are the *cestui que trusts*, to whom they may look for liability. Creditors of the corporation who give it credit upon the faith of its unpaid shares, have full notice that the trustee does not claim to hold the stock in his individual capacity, but holds it for others to whom they should look in cases of insolvency on the part of the corporation. But the unfortunate trustee finds out too late that the law is not as stated, and to his consternation he learns that despite his caution and in derogation of what seems just and reasonable he is compelled to go down into his pocket to pay a liability which he had no idea of assuming and which it was not intended he should assume.

The question as to the personal liability of one whose name appears as a stockholder upon the books of the corporation, followed by the term "trustee," the certificate of stock being made to him as trustee, does not seem to have come squarely before the courts of this country. There are many cases involving the question as to the personal liability of one whose name appears as a stockholder but who claims to own such stock as trustee, the evidence of which, however, not being apparent upon the records of the company. Such cases hold the personal liability of the owner of the stock upon the principle that the liability is upon him who holds the legal title apparent upon the books of the company.[1] There are other cases arising in States where the statutes directly relieve trustees from personal liability for stock standing in their names as trustees.[2] Again, there are cases arising under the provisions of the National Banking Act, wherein owners of stock in trust are also relieved from personal liability. Such cases, however, shed no light upon the main question. And, as stated at the outset, there does not seem to be a single case in this country which discusses in a satisfactory way, or which in any respect may be said to decide the exact question which is of interest here. The case of Grew v. Breed,[3] which is nearest in point, was the construction of a Massachusetts statute applicable to banks only, providing that holders of stock shall be liable in their individual capacity for the payment of all unpaid bills. Courts, however, have gone very far, and text books have blindly followed their lead, in carrying out and extending what is known as the "trust fund" doctrine. And in the determination of the liability of stockholders for unpaid assessments on stocks the courts have been zealous and eager in pushing the doctrine as to the rights of creditors to its extreme. As an example of this, creditors are constantly said to have rights superior and far beyond those which the corporation itself had. And the rights of the creditors of an insolvent corporation have been repeatedly held to be analogous to those of a *bona fide* purchaser of negotiable paper before maturity. It is upon this theory that the English courts have predicated the doctrine as to the personal liability of one in whose name stock stands as trustee. The leading case in England, wherein this doctrine was announced, is Muir v. City of Glasgow Bank.[4] There it appeared that A and B, trustees for C and D, accepted, as a part of a trust estate, stock in a Scotch banking company. They signed the deed of transfer "as trust disponees" and accepted the stock "as trust disponees aforesaid," subject to the articles and regulations of the said company in the same manner as if they had subscribed the contract of copartnership. Their names and addresses were entered in the stock ledger (the register of shareholders), followed

[1] Adderly v. Storm, 6 Hill, 624.
[2] Sayles v. Bates, 15 R. I. 342; Stedman v. Evelith, 6 Met. 114.
[3] 10 Met. 569.
[4] L. R. 4 App. Cas. 337.

by the words "as trust disponees" for C and D. The individual names of A and B did not appear in any list of shareholders issued to the public. The bank suspended payment with immense liability, and the liquidators placed A and B on the first part of their list of contributories as liable to calls "in their own right." In a petition to rectify the list of contributories by transferring the names of A and B from the first part to that part entitled "second part—contributories as being representatives of others"—it was held that the trustees A and B were partners of the company, and as such were personally liable for payment of all calls made on them in respect of the said stock. The doctrine of this case has been adopted by English courts and followed by text books in this country. Thus it is said that the general rule is "that a person whose name appears on the books of the corporation is a shareholder both as to the corporation and as to the public. Unless the rule has been changed by statute liability to pay calls and respond, in the event of insolvency, to creditors, attaches to the holder of the legal title only. The courts will not look beyond the registered shareholder nor inquire under what equities he holds. There are many illustrations of this. A, holding stock as trustee for B, must himself pay the assessment or respond as a contributory and look to B for reimbursement. This general rule is well illustrated by numerous cases where shares have been taken by one person in the name of another, to be held in trust for himself, or where they are taken by a nominee of the company to be held in trust for the company."[5] In a late work on corporations it is said that "while, of course, the trustee has his remedy against the *cestui que trust*, it is he and not the beneficiary that is primarily liable to corporate creditors upon stock standing in his name upon the company's register."[6]

Without attempting to contravert the doctrine as thus declared by the English courts, there is something at least to be said by way of criticism. So far as the corporation itself is concerned, having issued stock to a trustee who holds for a responsible party known to the corporation, the act being acquiesced in and accepted by all parties, there is no injustice in requiring the corporation to look to the *cestui que trust* for payment; and the same thing may be said as to creditors. The theory upon which creditors are supposed to have equities superior to the corporation in the matter of a claim for unpaid subscription is, that the former give credit to the company upon the faith of certain unpaid subscriptions which thereby become trust funds for the benefit of the creditors in the event of insolvency. But where stock stands in the name of a trustee, and the company is fully aware that the holding is simply a nominal one, and are also aware of who is the *cestui que trust*, it would seem that creditors should not be allowed to acquire equities superior, inasmuch as a matter of fact they have full notice of the existence of the trust and could acquire knowledge of who in fact was the real owner of the stock before extending credit to the corporation. As indicating a leaning in the direction above laid down, see the case of Burgess v. Seligman.[7] This case is in no respect an authority upon the question presented, as it involves simply a question whether, under the statute of Missouri relieving trustees of stock from liability, the defendant there held the stock as trustee or in absolute ownership. Mr. Justice Bradley, however, in the course of his opinion, made the following remarks: "The courts in England and some in this country have gone very far in sustaining a liability for unpaid subscriptions to stock against persons holding the same in any capacity whatever, whether as trustees, guardians or executors, or simply as collateral security. It cannot be denied that in some cases the extreme length to which the doctrine has been followed has operated very harshly. And in cases in which the corporation itself has no just right to enforce payment and where no bad faith or fraudulent intent is intervened, it may be doubted whether creditors have any better right unless by force of some express provision of statute." The case of Wells v. Larabee[8] is also instructive. This case involves liability upon national bank stock, and therefore is no authority here. But in the course of the

[5] Thompson on Liability of Stockholders, Secs. 178-79, citing English cases.

[6] 1 Beach on Private Corporations, p. 256, citing English cases and a few American cases not in point. See, also, to same effect, 2 Morawetz on Corporations, Sec. 853; Cook on Stock and Stockholders, 2d Ed. Sec. 503c.

[7] 107 U. S. 26.

[8] U. S. C. C. Iowa, 36 Fed. Rep. 866.

opinion the court uses the following language: "The facts are that he never was the beneficial owner of the shares of stock in question; that the same were assigned to him in trust by the actual owner to be held as security for the debt due the McGregor Bank, and that when the transfer of the books on the Commercial Bank was made to him the character of the title and interest transferred to him was indicated by the addition of the word 'trustee' thereto. Notwithstanding the ruling in some of the cases that such an addition is to be disregarded, the weight of authority accords with what on principle appears to be the common-sense construction of such a subscription. The word 'trustee' is one of significance. It is constantly made use of not only in legal phraseology, but in common speech. To indicate that one holds the title to property not in his own absolute right but for the benefit of some other party or parties, the fair and reasonable conclusion that all would reach upon noticing the fact upon the stock-book of a corporation that shares of stock were held by A B, 'trustee', would be that he held the same, not in his own right, but for the benefit of some other party. If the subscription upon the stock-register was in the name of A B, administrator, or executor, could it be fairly said that persons dealing with the corporation would be justified in assuming that stock was thus held by A B in his own right and not in a representative capacity? Such words as trustee, administrator, or executor, have a well understood meaning, and when attached to a name appearing upon the corporate books are certainly sufficient to notify all that shares of stock are held by the subscriber, not in his own right, but in a representative capacity, thus putting those dealing with the corporation upon inquiry." In Shaw v. Spencer[9] it is said that it is an erroneous assumption that the word "trustee" alone has no meaning or legal effect; that the law holds that the insertion of the word "trustee" after the name of a stockholder does indicate and give notice of a trust. No one is at liberty to disregard such notice and to abstain from inquiry for the reason that the trust is frequently simulated or pretended when it does not really exist.

As illustrating the point that creditors of a corporation stand in no better position as regards liability upon stock, such as is here considered, than the corporation itself, see Union Sav. Assoc. v. Seligman,[10] where it is held that one who accepts a certificate of stock of a corporation under an agreement that it is held by him only as collateral security, is not thereby rendered liable as a stockholder either to the corporation or its creditors. This result, of course, would naturally follow in a State like Missouri, where statute relieves from personal liability; but the courts go beyond that question and lay down the doctrine that one's liability as a stockholder of a corporation to the creditors thereof depends upon his legal relation to the corporation. If he is a stockholder, as between himself and the corporation he will be liable as such to the creditors of the corporation, otherwise not. One of the latest text books on corporations[11] says: "The doctrine that agreements to contribute capital by stockholders are more secure than other debts due the corporation, and that the receiver holds a different relation or footing with respect to them than the corporation held previous to his appointment, is not founded upon any rules of practical convenience or justice." And the same text book[12] says: "Creditors cannot complain of *inter se* arrangements among stockholders concerning subscriptions of which they have notice or might, by reasonable diligence, have notice;" citing Callanan v. Windsor,[13] where it is held that the statute making stockholders liable to creditors for their unpaid subscriptions does not apply to a case where, by a valid agreement to which the original creditor is a party, nothing is due or collectible on the stock.

As may be surmised, it is not the aim of this paper to contend that the personal liability of one holding stock as trustee is not authoritatively and firmly established. In view of the authorities in England and the *dicta* of courts and text writers in this country, no court would probably have the temerity to hold otherwise. But, as we have attempted to show, the doctrine is not supported by reason or fairness and it would be wise for the law-makers of all the States to enact statutes, already existing in some, relieving trustees from such liability.

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[9] 100 Mass. 382.

[10] 92 Mo. 635.

[11] Spelling on Corporation, vol. 2. Sec. 584.

[12] Sec. 816.

[13] 78 Iowa, 193.

TRADE-NAMES — INFRINGEMENT — INJUNCTION.

CHAS. S. HIGGINS CO. V. HIGGINS SOAP CO.

Court of Appeals of New York, January 22, 1895.

One Higgins sold to plaintiff, Chas. S. Higgins Co., a soap business long established at Brooklyn, together with the good will, labels, and trade-marks; reserving the right to engage in the same business. The soap made by said company was extensively advertised at large expense, and was known to the trade as "Higgins Soap," and plaintiff was known as its manufacturer, and was to some extent called the "Higgins Soap Company." Among the labels sold were "Higgins" and "Higgins Soap." Thereafter, Higgins, with others, including members of his family, organized a company to manufacture soap at Brooklyn under the name "Higgins Soap Company," and within four months thereafter that company received over 28 business letters intended for the other corporation. Held, that though the new company took its name from the family name of its organizers, and adopted it in good faith, without design to acquire plaintiff's trade, it would be restrained from using it.

ANDREWS, C. J.: The plaintiff seeks in this action to restrain the use by the defendant in this State of its corporate name, "Higgins Soap Company," in the business of manufacturing and selling soap, on the ground that such use is an unlawful invasion of the rights of the "Chas. S. Higgins Company," the plaintiff corporation. The corporate names of the respective corporations are not identical, but it is claimed in behalf of the plaintiff that there is a similarity between them which, in connection with other facts, is liable to and has produced confusion, and will enable the defendant to appropriate the trade of the plaintiff. The facts found show that in 1890, prior to the organization of the corporation defendant, under the laws of New Jersey, which took place in 1892, the plaintiff, a domestic corporation, organized by Charles S. Higgins and others, purchased from Charles S. Higgins and his partner, for the sum of $810,000, in stock and bonds, the soap business originally established in Brooklyn by the father of Charles S. Higgins in 1846, to which business Charles S. Higgins, succeeded on his father's death in 1860, together with the good will, labels, trade-marks, and other property employed in the business. The business was very valuable, and the plaintiff and its predecessor expended, subsequent to 1879, in advertising, the sum of $300,000, and the product was extensively sold in New York and other States, and was well known to the trade as "Higgins Soap," and the plaintiff corporation was sometimes known as the "Higgins Soap Company." The plaintiff and its predecessors manufactured a great variety of soaps, which were put up under different names, the leading article being known as "Chas. S. Higgins German Laundry Soap;" but, as we infer from the findings, all the soap so manufactured passed under the general name of "Higgins Soap." On the organization of the plaintiff corporation and the purchase of the business, it continued to carry it on in Brooklyn, where it had been originally established, and where it has ever since been carried on. Charles S. Higgins was a director of the plaintiff, and its first president, and so continued for a year after its incorporation, when he was displaced from his position as president, and ceased to be a director of the company. The ground of his discharge does not appear. Soon afterwards, in the summer of 1892, Charles S. Higgins, with his wife, his son, and two other persons, organized the defendant corporation, under the name of the "Higgins Soap Company," to carry on the soap business, and commenced the manufacture of soap, having its factory, principal office, and place of business outside of New Jersey, in the city of Brooklyn. Charles S. Higgins became the president of the defendant corporation, and, among other products, it manufactured and put up a soap in bars, on the wrappers of which appear the words "Higgins Soap Company, Original Laundry Soap, Charles S. Higgins, Prest.,"—and the bars were impressed with substantially the same words. It was shown on the trial that letters intended for the plaintiff, containing orders for goods, or relating to other business matters, had been sent addressed to the "Higgins Soap Company," "Chas. S. Higgins Soap Co.," and "Chas. Higgins Co.;" but, in general, the plaintiff's place of business was added to the address, and they were received by the plaintiff. There were produced 28 letters and envelopes of this kind, written within four months after the organization of the defendant and the commencement of this action, as it was stated that these did not comprise all the letters of this description. The main ground upon which the plaintiff has been defeated in the courts below is that Charles S. Higgins or the members of his family, either separately or jointly, had the right to establish the soap business, and to use the name of Higgins in conducting it, and to designate the product as "Higgins Soap," and that no right of the plaintiff was invaded by giving to the corporation formed by them the name of "Higgins Soap Company."

The case of Meneely v. Meneely, 62 N. Y. 427, following other cases, is an authority upon the proposition that any person may use in his business his family name, provided he uses it honestly and without artifice or deception, although the business he carries on is the same as the business of another person of the same name previously established, which has become known under that name to the public, and although it may appear that the repetition of that name in connection with the new business of the same kind may produce confusion, and subject the other party to pecuniary injury. The right of a person to use his family name in his business is regarded as a natural right, of which he cannot be deprived, by reason simply of priority of use by another of the same name. In the bill of sale from Charles S. Higgins to the plaintiff the

former consented that, so long as he should be allowed a salary of $15,000 per year for his services, he would give to the company the full benefit of his receipts, processes, etc., and that, "so long as he may be employed at the salary aforesaid, he, said Higgins, would refrain from making or selling soap in the city of Brooklyn except for said company;" thereby, by implication, reserving the right to engage in the business if the plaintiff should terminate his employment. But the question as to the right of the defendant to assume the name of the "Higgins Soap Company," or to do business in that name, is not affected by any contract entered into between Charles S. Higgins and the plaintiff. The defendant is a distinct person in the law from Charles S. Higgins, one of its corporators and officers. It had entered into no contract with the plaintiff, nor does it derive any of its rights from Charles S. Higgins. It stands in respect to the question involved in this litigation in the same situation as if Charles S. Higgins had never been a corporator or stockholder. It cannot appropriate the name or the trade-marks or the business of the plaintiff by any simulation or deceit, because the law prohibits such appropriation by any person, natural or artificial; but the fact that Charles S. Higgins was active in organizing the defendant, or that he may have been actuated in doing so by feelings hostile to the plaintiff or by a desire to injure its business, is, as we conceive, irrelevant to the case. The sole test of liability is whether the acts done, either in organizing the defendant or in the prosecution of its business subsequently, invaded any right of the prior corporation, or exceeded the boundaries of fair competition. On the other hand, we think it is equally clear that the defendant derives no additional immunity from the fact that the name of "Higgins," in its corporate name, was that of one or more of its corporators, or that Charles S. Higgins, or any one of that name, might engage in the soap business under the family name, or that Charles S. Higgins and the other corporators of the same name had consented to its use. The right of a man to use his own name in his own business the law protects, even when such use is injurious to another who has established a prior business of the same kind, and gained a reputation which goes with the name. But in such cases the courts require that the name shall be honestly used, and they permit no artifice or deceit, designed or calculated to mislead the public and palm off the business as that of the person who first established it and gave it its reputation. Croft v. Day, 7 Beav. 84; Holloway v. Holloway, 13 Beav. 209; Cement Co. v. Le Page, 147 Mass. 206, 17 N. E. Rep. 304. It is well settled that an exclusive right may be acquired in the name in which a business has been carried on, whether the name of a partnership or of an individual; and it will be protected against infringement by another who assumes it for the purposes of deception, or even when innocently used, without right, to the detriment of another; and this right, which is in the nature of a right to a trade-mark, may be sold or assigned. Levy v. Walker, 10 Ch. Div. 436; Hoxie v. Chaney, 143 Mass. 592, 10 N. E. Rep. 713; Bassett v. Percival, 5 Allen, 345; Cement Co. v. Le Page, *supra;* Millington v. Fox, 3 Mylne & C. 338. In respect to corporate names the same rule applies as to the names of firms or individuals, and an injunction lies to restrain the simulation and use by one corporation of the name of a prior corporation which tends to create confusion, and to enable the later corporation to obtain by reason of the similarity of names, the business of the prior one. The courts interfere in these cases, not on the ground that the State may affix such corporate names as it may elect to the entities it creates, but to prevent fraud, actual or constructive.

The names of corporations organized under general laws, and in most other cases, are chosen by the promoters, and it would be an easy way to escape from the obligations which are enforced as between individuals if a corporation were granted immunity by reason of their corporate character. The principle upon which courts proceed in restraining the simulation of names which have become trade-marks, and have come to designate the business of a particular person or company, is stated in Lee v. Haley, 5 Ch. App. 155,—an action to restrain the use by the defendant of the name of the "Guinea Coal Company," in his business. "I quite agree (said Gifford, L. J.) that they (plaintiffs) have no property in the name (Guinea Coal Company), but the principle upon which the cases on the subject proceed is not that there is property in the word, but that it is a fraud on a person who has established a trade, and carries it on under a given name, that some other person should assume the same name, or the same name with a slight alteration, in such a way as to induce persons to deal with him in the belief that they are dealing with the person who has given a reputation to the name." The cases are not infrequent in which the use of corporate names has been restrained on the principle of the trade-mark cases. Holmes, Booth & Haydens v. Holmes, Booth & Atwood Manuf'g Co., 37 Conn. 278; Massam v. Food Co., 14 Ch. Div. 748; Celluloid Manuf'g Co. v. Cellonite Manuf'g Co., 32 Fed. Rep. 94; Newby v. Railway Co., 1 Deady, 609, Fed. Cas. No. 10,144; William Rogers Manuf'g Co. v. Rogers & Spurr Manuf'g Co., 11 Fed. Rep. 495; Le Page Co. v. Russia Cement Co., 2 C. C. A. 555, 51 Fed. Rep. 942.

Whether the court will interfere in a particular case must depend upon circumstances,—the identity or similarity of the names, the identity of the business of the respective corporations, how far the name is a true description of the kind and quality of the articles manufactured or the business carried on, the extent of the confusion which may be created or apprehended, and other circumstances which might justly influence the judgment of the judge in granting or withhold-

ing the remedy. Whether upon equitable principles, the remedy should have been awarded in this case upon the facts proved and found is the question in this case. If the right of the plaintiff to relief depended exclusively upon the comparison of the corporate names of the parties, and the inferences to be drawn from such comparison alone, and without reference to any extrinsic facts, it might well be doubted whether the names are so similar that the court could find that confusion and injury would be likely to arise. But the case does not rest alone upon the inferences from such comparison. It would naturally be inferred from the names that both parties were corporations. The name of "Higgins" appears in each. The name of the plaintiff does not itself indicate the business of the plaintiff corporation, while the name of the defendant describes its business. But, while the plaintiff's name does not describe its business, its product has come to be known to the trade as "Higgins Soap," and to the public the name of the product identified the plaintiff as the manufacturer of this product, and the company came to be known and called, to some extent, the "Higgins Soap Company." The use of the name "Higgins" in connection with the business was valuable, because of its use for a great number of years by the father of Charles S. Higgins, and subsequently by the son, under which a large business had been built up, and by reason of the large sums which had been expended in advertising the product. The name of the plaintiff in connection with these facts indicated to dealers in soap that the article known as "Higgins Soap" was manufactured by the plaintiff. The manufacture had been established for 50 years, and carried on in the same place. Among the labels which were transferred to the plaintiff was one containing the words "Higgins Soap," and the word "Higgins" was placed upon many of the labels. It cannot be doubted upon the findings that the reputation of "Higgins Soap," when the defendant corporation was organized, applied to, and designated to the trade, the soap manufactured by the plaintiff and its predecessors. The promoters of the defendant, knowing the history of the business established by Higgins, Sr., in 1846, its transfer to the plaintiff, that the product was known to the trade as "Higgins Soap," that the business had become very valuable, and that large sums had been expended in advertising it, proceeded to organize the defendant corporation under the name of the "Higgins Soap Company," and to manufacture soap in the same city where the plaintiff's business was carried on. The inference seems irresistible that the defendant assumed its corporate name so that it should carry the impression that it was the manufacturer of "Higgins Soap," so well known to the public. But if the name was assumed in good faith, and without design to mislead the public and acquire the plaintiff's trade, the defendant, knowing the facts, must be held to the same responsibility as if it acted under the honest impression that no right of the plaintiff was invaded. The names are not identical, but, as said by Bradley, J., in Celluloid Manuf'g Co. v. Ceilonite Manuf'g Co., *supra:* "Similarity, not identity, is the usual recourse where one party seeks to benefit himself by the good name of another." In that case the learned and experienced judge who sat therein expressed the opinion that the use of the corporate name of the defendant should be restrained, although there was a much greater dissimilarity between the names there in question than exists between the names of the parties here. As between these parties, the case is, we think, the same as if the word "Soap" was written into the plaintiff's name, and its corporate designation was "Chas. S. Higgins Soap Company." The evidence shows that confusion has arisen, and it is a reasonable presumption that, if the defendant is permitted to continue to carry on the business of soap-making under its present name, the public will be misled, and the plaintiff's trade diverted the extent of such diversion increasing with the increase of the defendant's business.

We think the plaintiff, upon the facts found and proved, was entitled to relief by injunction. The judgment should be reversed, and a new trial granted. All concur, except Haight, J., not sitting. Judgment reversed.

NOTE.—*Persons of the Same Name.*—It may be stated as a general proposition that every man has an inherent right to use his own name upon his own goods to indicate their origin and ownership, and also to guarantee their character and quality; but the use of a man's name must be strictly confined to this purpose. He must use his name so as to indicate that the goods bearing it are his own goods and not those of another; and where one manufacturer or trader has established an extensive trade for an article of his make or selection, and employed his name as a trade-mark therefor, it behooves other traders having the same name, who subsequently go into competition with him, to so use the name as to avoid so far as possible all danger of deception of the public, or the sale of their goods as and for the goods of the trader who has first used the proper name upon his goods. This is a question of frequent occurrence, and it is believed that the tendency of the courts is to protect the industrious and successful manufacturer or vendor in all the fruits of his labor and industry, and to require that the rival of the same name who follows in his footsteps, shall exercise unusual care in the use of his own name to prevent injury to the one who has first used the name and established its reputation.

In Brown Chemical Company v. Meyer, 139 U. S. 540, it was held that the plaintiff or corporation organized under the laws of the State of Maryland, and the manufacturer of "Brown's Iron Tonic," could not restrain the defendants, successors in business of one Brown, who manufactured "Brown's Iron Tonic," when there was no evidence to show an intention to palm off their preparation as that of the plaintiff, as they have a perfect right to such use in the absence of such evidence.

In El Model Cigar Mfg. Co. v. Gato, 25 Fla. 886, the complainant manufactured cigars and marked them with his name "E. H. Gato." The defendant com-

pany had a person in their company, who was the junior member, named "G. H. Gato," and they stamped his name on their boxes of cigars. It was done to palm off their goods as the complainant's, and an injunction was granted.

In Turton v. Turton, 42 Ch. Div. 128, the plaintiffs had for many years carried on the business of steel manufacturers under the name of "Thomas Turton & Sons." The defendant, John Turton, had for many years carried on a similar business in the same town, at first as John Turton then as John Turton & Co. In 1888, he took his two sons into partnership and carried on the same business as "John Turton & Sons." There was no evidence that the defendant imitated the trade-marks or labels of the plaintiffs, or otherwise attempted to deceive the public. It was held that, although there was a probability that the public would be excessively misled by the similarity of the names, the plaintiffs were not entitled to an injunction restraining the defendants from using the name of "John Turton & Sons."

In Jennings v. Johnson, 37 Fed. Rep. 364, the plaintiff was entitled to manufacture "Johnson's Anodyne Liniment," which had been manufactured and sold for over fifty years put up in certain sized bottles, etc., and with also a *fac simile* of the name of A. Johnson. Defendant's article was called "Johnson's Anodyne Liniment," and appeared in the same sized bottles, etc., but bore the name of "F. E. Johnson." There was evidence of actual deception. The defendant was restrained.

In Williams Rogers Mfg. Co. v. Simpson, 54 Conn. 527, the complainant corporation having procured the right from William Rogers, Sr., who had a great reputation as a silverware manufacturer, to manufacture and stamp his name on silverware, asked for an injunction to restrain the defendant corporation from using the same name "William Rogers," on their silverware, the defendant corporation having procured the right from William Rogers, Jr., whose reputation was also valuable. An injunction was refused, as the statements were not made with a fraudulent intent to mislead the public into the belief that the goods so advertised were those of the plaintiff. See, also, Rogers v. Rogers, 53 Conn. 121, 55 Am. Rep. 78.

In Laudreth v. Laudreth, 22 Fed. Rep. 41, the complainant sold peas called "Laudreth's Extra Early Peas." The defendant soed peas called by the same name which was done to deceive. An injunction was granted. The court said: "Even admitting that the defendant has the right to use the same words as those which constitute the complainant's label, he has no right to use them in such form or such style of arrangement as to lead the public to suppose that the goods contained in his bags are grown and sold by the complainant."

In Shaver v. Shaver, 54 Iowa, 208, 37 Amer. Rep. 194, the plaintiff being a manufacturer of wagons used as a trade-mark "Shaver Wagon Eldora" which was painted on the sides of all his wagons. The defendant having painted the same on his wagons, an injunction was granted against him.

Joseph Thorley, for many years, manufactured and sold extensively an article called "Thorley's Food for Cattle." His executors continued the business. Shortly after his death a company was formed by other persons under the name of J. W. Thorley's Cattle Food Company, in which J. W. Thorley, a brother of Joseph Thorley, took a one shilling share. The company sold the same article under the name of "Thorley's Food for Cattle." James, L. J., said: "I am therefore of opinion, that in this case what the defendant company have done has been calculated to deceive and I am bound to say in my judgment, I have no doubt was from the first intended to deceive the persons purchasing their article into the belief that they were purchasing the article which Joseph Thorley had formerly manufactured at the works which had attained the great reputation which Thorley's manufacture appears to have obtained." Massam v. Thorley's Cattle Food Co., 14 Ch. Div. 748.

Devlin and others were engaged in the clothing business and under the name of Devlin & Co. The defendant was engaged in the same business and was enjoined from using the sign to deceive. Devlin v. Devlin, 69 N. Y. 212. In England v. New York Publishing Co., 8 Daly (N. Y.), 375, the plaintiff had his name changed from Henry Carter to Frank Leslie and published various newspapers under titles of which the words "Frank Leslie's" formed in each instance a part. The defendant's name is Frank Leslie and he is a son of the plaintiff. He organized a corporation under the name of the New York Publishing Co., commenced the publication of a paper entitled "*Frank Leslie Junior's Sporting and Dramatic Times.*" An injunction against defendant was refused because he was entitled to use the name Frank Leslie. In Gilman v. Hunnewell, 122 Mass. 129, the plaintiffs, as assignees of John L. Hunnewell, manufactured certain medicines called "Hunnewell's Electric Pills," etc. The defendants, Edwin Hunnewell, and another manufactured similar medicines called "Hunnewell's Family Pills," etc. There being no proof of fraud on the part of the defendants or any representation that the medicines made by them were manufactured by the plaintiffs, an injunction was refused. In Decker v. Decker, 52 How. Pr. (N. Y.) 218, the plaintiffs were manufacturers of pianofortes under the firm name of "Decker Bros." The defendants were also manufacturers of pianofortes and called theirs the "Decker" piano. A motion for an injunction by plaintiffs was refused on the ground that the name was not employed by defendants for the purpose of deception or with a view to mislead the public or injure the plaintiff. In Meneely v. Meneely, 62 N. Y. 427, the plaintiffs were manufacturers of bells at Troy, New York, and stamped upon them "Meneely's West Troy, N. Y." The defendants, Meneely and Kimberly, entered into a partnership under the name of "Meneely & Kimberly," for manufacturing bells at Troy, and stamped upon them "Meneely & Kimberly, Troy, N. Y." An injunction against defendants was refused. Rapallo, J., said: Every man has the absolute right to use his own name in his own business, even though he may thereby interfere with or injure the business of another person bearing the same name, provided he does not resort to any artifice or contrivance for the purpose of producing the impression that the establishments are identical or do anything calculated to mislead. Where the only confusion created is that which results from the similarity of the names, the courts will not interfere. A person cannot make a trademark of his own name and thus obtain a monopoly of it which will debar all other persons of the same name from using their own names in their own business." In Faber v. Faber, 49 Barb. (N. Y.) 357, the complainant was the manufacturer of the "A. W. Faber lead pencil," the defendant of the "Faber" lead pencil. The relief asked was refused as each had a perfect right to use his own name in his business and any injury which the plaintiff had suffered or might suffer by such use of the defendant's name merely must be received as *damnum absque in-*

juria. In Clark v. Clark, 25 Barb. (N. Y.) 76, the plaintiffs were manufacturers of "Clark's" SpoolCotton and on the spools were formed concentric circles; the defendant was also the manufacturer of cotton called by his own name "Clark" and he also used the concentric circles on the end of the spool. It was held that the defendant had a perfect right to use his own name, but he should change the concentric circles and the colors. In Taylor v. Taylor, 23 Eng. L. & Eq. 218, the plaintiffs were manufacturers of thread which was marked "Taylor's Persian Thread." The defendant began to mark his thread "Taylor's Persian Thread" and otherwise to initate the plaintiffs trade-mark. An injunction was granted. So also in Holloway v. Holloway, 13 Beav. 209. In Croft v. Day, 7 Beav. 84, alluded to in the principal case, Lord Langdale in granting an injunction used the following language: "He has a right to carry on the business of a blacking manufacturer honestly and fairly, he has a right to the use of his own name. I will not do anything to debar him from the use of that or any other name calculated to benefit himself in an honest way; but I must prevent him from using it in such a way as to deceive and defraud the public and obtain for himself, at the expense of the plaintiffs, an undue and improper advantage."

BOOKS RECEIVED.

The American and English Encyclopædia of Law. Compiled under the Editorial Supervision of Charles F. Williams, Assisted by David S. Garland. Volume XXVII. Northport, Long Island, N. Y.: Edward Thompson Company, Law Publishers. 1895.

New Criminal Procedure, or Commentaries on the Law of Pleading and Evidence and the Practice in Criminal Cases. By Joel Prentiss Bishop, LL. D., Fourth Edition, being a new work based on former editions. Vol. I, General and Elementary, complete in itself. Chicago, T. H. Flood & Company. Law Publishers. 1895.

A Treatise on the Law of Executors and Administrators. By Sir Edward Vaughan Williams (Late one of the Judges of her Majesty's Court of Common Pleas). Ninth English Edition, by Sir Roland L. Vaughan Williams, Knt. (One of the Justices of her Majesty's High Court of Justice). Seventh American Edition, by Joseph F. Randolph and William Talcott (Editors of Jarman on Wills), of the New Jersey Bar. In three Volumes. Jersey City. Frederick D. Linn & Co., Law Publishers. 1895.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCOUNT—Agreement as to Settlement.—One who receives money for another is liable to him for the amount thereof, though the person from whom he received it could not recover from the payor because the contract under which it was paid was illegal.—HEIDENHEIMER v. BAUMGARTEN, Tex., 29 S. W. Rep. 208.

2. ACTIONS — Consolidation.—Where an action was commenced in a justice's court having jurisdiction, at the same time that another action between the same parties, involving the same subject-matter, was begun in a Circuit Court not having jurisdiction, and the judgment of the justice court was taken to such Circuit Court by appeal, the actions cannot be consolidated, but judgment must be rendered on the issues raised in the justice's court.—HOWE v. COLE, Miss., 16 South. Rep. 531.

3. ADVERSE POSSESSION.—Where a person who has inclosed, and had the naked possession for over seven years of, a part of a certain tract of otherwise unoccupied land, makes an entry of the whole tract, and continues in the actual possession of such inclosure, without extending it, for seven years more, he acquires a possessory right, under Act 1819, § 2, to the entire tract, as against the holder of the legal title.—BON AIR COAL, LAND & LUMBER CO. v. PARKS, Tenn., 29 S. W. Rep. 130.

4. APPEAL—Bond.—Where an appeal is taken in the same case from the judgment and from the order denying a new trial, an undertaking, to be good, must specify the appeal or appeals to which it is intended to apply, and a recital that it is given in consideration of "such" appeal is not sufficient.—HOSKINS v. WOODEN, Idaho, 38 Pac. Rep. 933.

5. APPEAL—Motion for New Trial.—The time within which an appeal from a judgment upon which a motion for a new trial has been made must be taken, under Code, § 3619, providing that appeals from judgments "must be taken within one year from the rendition of the judgment or decree," begins to run from the date the court rules upon the motion for a new trial.—FLORENCE COTTON & IRON CO. v. FIELD, Ala., 16 South. Rep. 538.

6. APPEAL—Suit on Insurance Policy.—Where an action on an insurance policy is tried on the theory that the statutory 30 days' notice of the time when the premium note fell due was given, the constitutionality of the law requiring such notice to be given, before the policy can be avoided for non-payment of the premium note, cannot be questioned for the first time on appeal.—ROSS v. HAWKEYE INS. CO., Iowa, 61 N. W. Rep. 852.

7. ASSAULT—Damages.—A judgment of conviction for assault before a justice is not admissible, in an action for damages by the person assaulted against defendant, to show the fact of assault.—DOYLE v. GORE, Mont., 38 Pac. Rep. 939.

8. ASSUMPSIT—Pleading.—The fact that the complaint, in an action by an assignee of an account for

goods sold against copartners, after alleging the incurring of the liability by defendants, also alleges that one of the defendants promised to pay the same, does not render it demurrable, as the latter allegation may be treated as surplusage.—MORROW v. NORTON, Cal., 38 Pac. Rep. 953.

9. ATTORNEY — Authority to Compromise Claim.—Where attorneys are instructed by their client to have a claim which they have for collection "placed in judgment at as early a date as possible, and have same duly recorded," if payment is not made on demand, such instructions revoke any prior authority given the attorneys to compromise the claim.—MAXWELL v. PATE, Miss., 16 South. Rep. 529.

10. ATTORNEY — Compromise of Suit.—A representative of an estate has power to compromise an action prosecuted or defended by him in good faith, so far as the rights of the estate might be affected by a judgment therein, without being authorized to do so by the Probate Court, whether such case involves title to real estate or otherwise.—DENNY v. PARKER, Wash., 38 Pac. Rep. 1018.

11. ATTORNEY AND CLIENT—Privileged Communications.—Communications by a client to his attorney of an intent to violate the insolvency law by permitting certain creditors to obtain preferences, are not entitled to protection as confidential.—TAYLOR v. EVANS, Tex., 29 S. W. Rep. 172.

12. ATTORNEY IN FACT—Power to Sign Note.—A power of attorney to borrow money, and secure its payment by a mortgage on land, authorizes the attorney to execute a mortgage with all the usual covenants demanded by those loaning money on such security.—RICHMOND v. VOORHEES, Wash., 38 Pac. Rep. 1014.

13. BANKS—Lien on Collections.—Where, at the time of making an assignment, the insolvent was indebted to a bank which had for collection a note belonging to him, the bank is entitled to the proceeds of the note as against the assignee.—GREENE v. JACKSON BANK, R. I., 20 S. E. Rep. 963.

14. BANKS — Powers.—The word "banking," as used in Const. art. 4, § 34, prohibiting the legislature from passing any act granting any charter "for banking purposes," and *Id.* § 35, commanding the legislature to prohibit any person, association, or corporation from "exercising the privilege of banking or creating paper to circulate as money," refers merely to the issuance of bank bills or paper to circulate as money.—BANK OF MARTINEZ v. HEMME ORCHARD & LAND CO., Cal., 38 Pac. Rep. 963.

15. BILL OF EXCHANGE—Negotiability.—A bill of exchange for the payment of a certain sum, "with exchange," is not negotiable.—CULBERTSON v. NELSON, Iowa, 61 N. W. Rep. 854.

16. BILLS AND NOTES—Negotiability.—The statute of South Dakota defining negotiable instruments provides that "a negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer; must be made payable in money only, and without any condition not certain of fulfillment; must not contain any other contract than such as is specified in this article:" Held that, by virtue of the statute, a note drawn and made payable in South Dakota, "with exchange and costs of collection," was not a negotiable note.—SECOND NAT. BANK OF AURORA v. BASUIER, U. S. C. C. of App., 65 Fed. Rep. 59.

17. CARRIERS—Passenger's Trunk.—A railroad company which receives as a passenger's baggage the trunk of a drummer, with notice that it contained his samples, cannot escape liability for injury to the contents by showing that they were not in fact passenger's baggage.—FT. WORTH & R. G. RY. CO. v. I. B. ROSENTHAL MILLINERY CO., Tex., 29 S. W. Rep. 196.

18. CARRIERS OF PASSENGERS—Injury to Person Riding on Pass.—In an action against a carrier for personal injuries received by plaintiff while riding on a free pass, plaintiff is estopped to assert that the pass was void, being issued to him as a public officer, in violation of the law.—MULDOON v. SEATTLE CITY RY. CO., Wash., 38 Pac. Rep. 995.

19. CHATTEL MORTGAGE — Sale. — Under a chattel mortgage, which provides that, if the mortgagee deems himself insecure, he may take possession of the property, and sell the same, as on default, the mortgagee may sell the property before the debt becomes due.—COLE v. SHAW, Mich., 61 N. W. Rep. 869.

20. CONTRACT — Employment of Editor. — Where plaintiff bound himself to continue with defendant as editor of the latter's paper for a stated period, performing such services as defendant should direct, he cannot complain of the latter's action in taking a portion of the paper from his control.—LATHROP v. VISITOR PRINTING CO., R. I., 20 S. E. Rep. 964.

21. CONTRACT—Improvement of Street.—A contract for the improvement of a street provided that "to prevent all disputes and litigation" the city engineer's decision as to the work shall "be final and conclusive:" Held, that one of the parties could not avoid being bound by the engineer's decision by showing merely that he was negligent and made mistakes.—ROWMAN v. STEWART, Penn., 20 S. E. Rep. 988.

22. CONTRACT—License to Construct Railroad—Limitation as to Time— Possession of Highway—Rights of Plank-Road Company.—Where a contract giving permission to construct a railroad over land provides that the agreement shall be void unless the road is completed within a certain time, the licensor may enjoin the further extension of the road over the land after such time has elapsed. — DETROIT & BIRMINGHAM PLANK ROAD CO. v. DETROIT SUBURBAN RY. CO., Mich., 61 N. W. Rep. 880.

23. CONTRACT BY IMBECILE—Estoppel.—In an action to compel defendant to deed to plaintiff a one-half interest in land, it appeared that plaintiff, who was weak mentally, had a contract to purchase the land, and agreed with defendant that, if she would contribute a small part of the purchase price, the deed should be in their joint names. Defendant took plaintiff's share of the price, and had the deed made in her own name: Held, that defendant could not question plaintiff's capacity to make the land contract. — MCWILLIAMS v. DORAN, Mich., 61 N. W. Rep. 881.

24. CONTRACT OF SALE— Interpretation. — Where a contract for the sale of coal during a period of five years provides that "settlements from said coal shall be made upon the 15th day of each month for all coal delivered before the 1st day of such month," and the buyer pays according to the terms of such contract, but under protest, because of the alleged inferior quality of the coal, the payments are voluntary, and cannot be recovered.—ARMSTRONG v. LATIMER, Penn., 28 S. E. Rep. 990.

25. CONTRACTS—Consideration. — Plaintiff, after unsuccessfully trying to sell P's oil property to F, and after it had been withdrawn from the market, told the details thereof to defendant, and that he thought later the sale could be consummated; and it was agreed that defendant should, when the time seemed opportune, try to make the sale, any commissions obtained to be equally divided: Held, that, defendant having made the sale while his agreement with plaintiff was in force, the latter was entitled to half the commissions obtained by defendant.—LOAN v. GILLMOR, Penn., 20 S. E. Rep. 989.

26. CORPORATION— Liabilities of Stockholders.—The nature of the business of the defendant corporation, as expressed in its articles of incorporation, is, among other things, the publishing of a daily and weekly newsyaper: Held, it is not an exclusively manufacturing corporation, and its stockholders are not exempt from liability to its creditors on their paid-up stock.—OSWALD v. ST. PAUL GLOBE PUB. CO., Minn., 61 N. W. Rep. 902.

27. CRIMINAL EVIDENCE—Homicide— Threats.— Evidence of previous threats is inadmissible in evidence

when no overt act of the deceased against the accused has been established.—STATE v. KING, La., 16 South. Rep. 566.

28. CRIMINAL EVIDENCE — Rape.—Where defendant waived examination before the justice, and upon arraignment pleaded not guilty, his right to object that there was no examination of witnesses cognizant of the facts before the issuance of the warrant was waived.—PEOPLE v. HARRIS, Mich., 61 N. W. Rep. 871.

29. CRIMINAL LAW—Arguments of Counsel.—Counsel necessarily must be allowed considerable latitude in the argument of a case, and, unless the court in a felony trial permits counsel for the State to so far transgress the rule of propriety as clearly to prejudice the prisoner, the judgment will not be reversed because of improper remarks by counsel made to the jury in argument.—STATE v. SHAWEN, W. Va., 20 S. E. Rep. 873.

30. CRIMINAL LAW—Assault with Intent to Kill.—On trial for assault with intent to murder, where there was evidence that defendant had been struck by the prosecuting witness in the house of the latter, and left the house, immediately followed by the prosecuting witness, who carried a pistol, and pointed it at defendant, and that defendant turned and shot him, the whole having taken place in a short space of time, it was error for the court to fail to charge on aggravated assault.—SLAUGHTER v. STATE, Tex., 29 S. W. Rep. 161.

31. CRIMINAL LAW—Former Jeopardy.—The accused is "put in jeopardy of punishment," in the legal and constitutional sense, when a jury is impaneled and sworn to try his case, upon a valid indictment.—STATE v. SOMMERS, Minn., 61 N. W. Rep. 907.

32. CRIMINAL LAW—Gaming.—A person's private bedroom is his "private residence," within the statute exempting from prosecution those who gamble at a private residence.—ALLPHIN v. STATE, Tex., 29 S. W. Rep. 159.

33. CRIMINAL LAW—Murder.—A person present at the commission of a murder, and aiding, either by keeping guard, or by counseling or encouraging the commission of the crime, is equally guilty with the person who delivers the mortal blow.—PEOPLE v. REPKE, Mich., 61 N. W. Rep. 861.

34. CRIMINAL LAW—Rape—Attempt to Commit.—Pen. Code, § 28, punishes carnal knowledge and abuse of any female under the age of consent without regard to the question of violence. Section 303 punishes an attempt to commit any crime: Held, that an attempt to commit rape on a girl under 12 years of age is a crime, though section 22 makes an assault with intent to commit rape a specific offense.—STATE v. BERZAMAN, Wash., 38 Pac. Rep. 1037.

35. CRIMINAL PRACTICE — Perjury—Indictment.—An indictment under 1 Rev. St. p. 885, § 2, providing that if any person shall "willfully and knowingly" swear that which is false, etc., which alleges that defendant did "unlawfully and feloniously" falsely swear, is defective.—COMMONWEALTH v. TAYLOR, Ky., 29 S. W. Rep. 139.

36. CRIMINAL PRACTICE—Theft—Indictment.—An indictment for theft of cotton is not faulty for alleging in one count that property and possession at the time of the taking were in a certain person, and in the second count alleging property in him and possession in another holding for him.—SHUMAN v. STATE, Tex., 29 S. W. Rep. 160.

37. DEED OF TRUST—Assignor of Note.—The assignment of a bond or note secured by deed of trust carries with it, as an incident of such assignment, the benefit of the lien of the deed of trust, unless excluded expressly or by fair and reasonable implication.—THOMAS v. LINN, W. Va., 20 S. E. Rep. 878.

38. DESCENT AND DISTRIBUTION—Descendants.—In 3 How. Ann. St. § 5772*a*, providing that if deceased shall have no issue or parent the property shall descend to his or her brothers and sisters, and the children of the deceased brothers and sisters, by right of representation, the word "children" refers only to sons and daughters in the first degree, and the grandchildren of deceased brothers and sisters do not take by representation.—IN RE CHAPOTON'S ESTATE, Mich., 61 N. W. Rep. 892.

39. DIVORCE — Decree for Continuing Alimony.—Where no appeal was taken from a decree of divorce granting the wife continuing alimony an action to enforce the payment of the periodical sums cannot be defended on the ground that such a grant of alimony was unauthorized.—KING v. MILLER, Wash., 38 Pac. Rep. 1020.

40. EJECTMENT—Right to Crops.—Where plaintiff in ejectment establishes his title, he cannot maintain claim and delivery for a crop raised and harvested on the land by defendant's tenant before judgment in ejectment was rendered, though the tenant knew that plaintiff disputed his landlord's title.—JOHNSTON v. FISH, Cal., 38 Pac. Rep. 979.

41. EMPLOYER AND EMPLOYEE—Contract—Damages.—In an action by an employee for breach of the employment contract, the burden is on the employer to show, in reduction of damages, that plaintiff received pay for other work that he did after he was discharged.—PINET v. MONTAGUE, Mich., 61 N. W. Rep. 876.

42. EQUALITY OF TAXATION. — Laws and decisions construing them, the force or power of which are not directly nor by necessary implication denied by a new constitution, are not affected by its adoption. An act of the legislature authorizing city authorities to assess two-thirds of the cost of paving the roadway in a street on the abutting land is in conflict with Const. art. 9, § 8, providing that taxes must be uniform in respect to persons and property within the jurisdiction of the body imposing the same.—MAULDIN v. CITY COUNCIL OF GREENVILLE, S. Car., 20 S. E. Rep. 842.

43. EQUITY — Reformation of Insurance Policy.—A firm sold land to M C T, and took a mortgage for the price. It also assigned in blank a policy on the buildings, and the agents of the insurance company put in the blank by mistake the name D M T, and the company made the policy payable to such firm as its interest might appear. The firm, when the policy expired, took it to the agents for renewal, and the company issued to D M T a new policy, payable to such firm as its interest might appear. No such person as D M T was known: Held, that the policy was properly reformed as to the name of the assured.—THOMASON v. CAPITAL INS. CO., Iowa, 61 N. W. Rep. 843.

44. ESTOPPEL BY DEED—Homestead.—A husband and wife mortgaged property previously occupied by them as a homestead. The instrument recited that the property was not their homestead, but that their residence and homestead were in another State: Held, that the mortgagors were estopped from claiming that the mortgage was void as against their homestead rights.—MOERLEIN v. SCOTTISH MORTGAGE & LAND INV. CO. OF NEW MEXICO, Tex., 29 S. W. Rep. 162.

45. EVIDENCE—Proof of Handwriting.—To render a person a competent witness to testify as to the handwriting of another, it is not sufficient to show the receipt of friendly letters purporting to come from such person alone, but some admission or acquiescence equivalent to an acknowledgment that she was the writer of such letters must be shown on the part of such person, independent of their receipt and contents.—FLOWERS v. FLETCHER, W. Va., 20 S. E. Rep. 870.

46. EVIDENCE—Statements of Agent.—A statement by an agent that his principal owed a certain person money is not evidence, in garnishment proceedings, of the debt, where it is not shown that the statement was made in the discharge of the agent's duties, or while acting within the scope of his agency, and a contract between the principal and such person fixed the time at which the indebtedness would accrue.—LAKE COMO LAND & IMP. CO. v. CAUGHLIN, Tex., 29 S. W. Rep. 185.

47. EXEMPTION — Insurance Money. — Insurance on homestead property is exempt from the claims of general creditors.—JONES v. WHITESELLE, Tex., 29 S. W. Rep. 177.

48. FEDERAL OFFENSE—Conspiracy.—The offense of conspiracy, under the laws of the United States, is sufficiently proved if the jury is satisfied that two or more of the parties charged entered into an agreement to accomplish a common and unlawful design, which was arrived at by mutual understanding, followed by some act done by any of the parties for the purpose of carrying it into execution, and the joint assent may be proven by direct testimony, or may be inferred from facts which establish, to the satisfaction of the jury, that an unlawful combination had been formed.—UNITED STATES v. BARRETT, U. S. C. C. (S. Car.), 65 Fed. Rep. 62.

49. FIXTURES—Mortgage.—Machinery for a brewery, consisting of a direct expansion refrigerating plant, placed in a building especially built for the purpose, becomes a part of the realty, as between one placing it there on conditional sale and a subsequent mortgagee of the realty.—WADE v. DONAU BREWING CO., Wash., 38 Pac. Rep. 1009.

50. FRAUDS, STATUTE OF.—Contract—Where defendant had agreed orally to purchase certain realty of plaintiff, and executed his note to plaintiff in return for the latter's quitclaiming the premises to him, their subsequent verbal agreement to settle a difference between them by defendant's payment of a certain sum is not within the statute of frauds, though the original contract, void under that statute, might have formed the basis for arriving at the sum equitably due.—JOHNSON v. CLARKSON, Tex., 29 S. W. Rep. 178.

51. FRAUDS, STATUTE OF — Contract to Sell Land.—A contract for the sale of real estate, signed only by the vendor, which is sufficient, under Gen. St. ch. 22, § 1, to bind him, will support an action against the vendee for the purchase price, though he has not signed the contract.—MOORE v. CHENAULT, Ky., 29 S. W. Rep. 141.

52. FRAUDS, STATUTE OF—Parol Lease.— Where the consideration of a parol lease for two years was that the lessee should clear part of the land, and the tenant was then in possession, and remained therein, and made a portion of the clearing, he cannot, in summary proceedings to remove him from the land because of his failure to clear the land agreed on, claim that the lease is void under the statute of frauds.—SMELLING v. VALLEY, Mich., 61 N. W. Rep. 878.

53. FRAUDULENT ASSIGNMENT OF PERSONALTY. — In showing the fraud necessary to impeach a conveyance, the fraudulent intent of the parties may be shown by the circumstances attending the transaction. Circumstantial evidence is not only sufficient, but is often the only evidence that can be adduced.—RICHARDSON v. RALPHSNYDER, W. Va., 20 S. E. Rep. 854.

54. FRAUDULENT CONVEYANCES—Preferential Bill of Sale.—A stipulation in a bill of sale, given as a preference, which empowered the vendor, if the value of the goods as finally determined exceeded the consideration of the bill of sale, to appoint other creditors to whom the excess should be paid by the vendee, reserved not a benefit to the vendor, but a lawful right to prefer creditors.—GOETTER v. SMITH, Ala., 16 South. Rep. 534.

55. FRAUDULENT CONVEYANCES—Rights of Bona Fide Purchaser.—A creditor cannot recover possession of goods, transferred by his debtor with intent to defraud his creditors, from a purchaser in good faith, without refunding to the purchaser such part of the price as has been paid.—MARTIN v. MATTHEWS, Wash., 38 Pac. Rep. 1001.

56. GARNISHMENT—Affidavit. — Under 1 Sayles' Tex. Civ. St. art. 183, cl. 8, authorizing garnishment where a judgment debtor makes affidavit that defendant has not property in his possession within the State, subject to execution, sufficient to satisfy the judgment, an affidavit that he has not sufficient property within a certain district of the State is insufficient.— BOOTH v. DENIKE, U. S. C. C. (Tex.), 65 Fed. Rep. 43.

57. GARNISHMENT—Conveyance in Fraud of Creditors.—Under 3 How. Ann. St. § 8091, providing that if a person garnished his property of the principal defendant, under a conveyance void as to creditors of defendant, or if he has received and disposed of such property, which is held by such a conveyance, he may be adjudged liable as garnishee, though defendant could not have sued him therefor, the liability of the garnishee depends on the conveyance being in fraud of the general creditors of defendant, and not on fraud being perpetrated on the particular person from whom defendant bought the property.—GUMBERG v. TREUSCH, Mich., 61 N. W. Rep. 872.

58. GARNISHMENT — Fraudulent Sale.— The issue in garnishment being whether a sale of goods by defendant to the garnishee was in fraud of creditors, a money judgment cannot be rendered against the garnishee, as on a finding for plaintiff the court must, under Laws 1893, ch. 56, § 16, order the goods turned over to him.—CAMPBELL v. SIMPKINS, Wash., 38 Pac. Rep. 1039.

59. HOMESTEAD ENTRY — Legal Title. — Under the homestead laws the legal title to the homestead does not pass to the applicant until proof of the required five-years residence and cultivation is made.—BOLTON v. LA CAMAS WATER-POWER CO., Wash., 38 Pac. Rep. 1043.

60. HUSBAND AND WIFE — Community Property.—In the absence of evidence to the contrary, it will be presumed that a note given by a husband in the prosecution of his business is a charge against the community property.—MCDONOUGH v. CRAIG, Wash., 38 Pac. Rep. 1034.

61. HUSBAND AND WIFE— Community Property.—A will of a married man, in terms disposing of all the community property, which states that it "is made with full knowledge of property rights of husband and wife, and with the knowledge and consent of my said wife," indicates the intention of testator to dispose o all his property, including the interest of his wife.—IN RE SMITH'S ESTATE, Cal., 38 Pac. Rep. 950.

62. INJUNCTION —Damages. — Code, § 572, providing that certain damages shall be allowed on the dissolution of an injunction staying proceedings for the collection of a judgment, applies exclusively to injunctions sued out by parties to the judgment; and therefore only attorney's fees can be allowed where the injunction is sued out by a stranger to the judgment before final decree.—ARMSTRONG v. FUSZ, Miss., 16 South. Rep. 532.

63. INTERSTATE COMMERCE— Connecting Carriers.—Neither public policy nor any legislation forbids a railroad company engaged in interstate commerce to make an exclusive contract with a carrier, whose route connects with and extends beyond that of such railroad company, for through billing and rating over the connecting lines, and by which such carrier is given the exclusive right to receive from the railroad company and forward freight destined to points beyond the line of such railroad.—ST. LOUIS DRAYAGE CO. v. LOUISVILLE & N. R. R., U. S. C. C. (Mo.), 65 Fed. Rep. 39.

64. JUDGMENT — Res Judicata.—Where a judgment rendered by an alderman against a husband and wife, for necessaries contracted for by the wife on the credit of her separate estate, is reversed as to the wife on *certiorari*, by the court of common pleas, such judgment is not a bar to another action against the wife on the same claim.—ROLL v. DAVIDSON, Penn., 20 S. E. Rep. 987.

65. JUSTICE OF THE PEACE—Jurisdiction.—It is no objection to the jurisdiction of a justice of the peace that plaintiff remitted a part of his claim for the purpose of reducing it within the justice's jurisdiction.—HUNTON v. LUCE, Ark., 29 S. W. Rep. 151.

66. LANDLORD AND TENANT — Agreement to Repair.—An agreement by a lessor to make repairs, entered into after the execution of the lease, and founded merely

on his relation to the lessee, being without consideration, does not bind him.—PETICOLAS V. THOMAS, Tex., 29 S. W. Rep. 166.

67. LANDLORD AND TENANT — Lease—Agreement.—An agreement which recited that plaintiff "hereby lets, demises, and leases" to defendant certain premises, "to have and to hold the same for a term ending" at a named date, at a specified annual rental payable in monthly installments, "said rental to begin when the building hereinafter described shall be ready for occupancy," and by which plaintiff bound himself to erect upon the premises a factory building of specified dimensions by a certain date, is a valid lease in *præsenti* for a term to commence in *futuro*, the essential element of certainty as to the commencement of the term having been satisfied by the completion of the building.—COLCLOUGH V. CARPELES, Wis., 61 N. W. Rep. 836.

68. LANDLORD AND TENANT — Lease for Illegal Purposes.—The mere fact that the lessor knew it was the intention of the lessee to use the premises for the illegal sale of liquor does not avoid the lease so as to prevent a recovery of the rent.—MILLER V. MAGUIRE, R. I., 20 S. E. Rep. 966.

69. LIBEL.—The charge that a woman is a "public prostitute" is not actionable *per se* under the statutes of Idaho; neither adultery, fornication, nor prostitution being punishable as such by the statutes of Idaho. —DOUGLAS V. DOUGLAS, Idaho, 38 Pac. Rep. 934.

70. LIBEL—Imputation of Crime.—A pamphlet issued by defendant, containing facts for the guidance of insurance companies in rating property, gave plaintiff's name as the owner of several buildings, and stated that one of the buildings was occupied as a "blind tiger," meaning that it was occupied for the sale of liquor contrary to law: Held, that plaintiff could alleges by innuendo that the pamphlet intended to charge him with operating a blind tiger in such building.—SCHULZE V. JALONICK, Tex., 29 S. W. Rep. 193.

71. LIFE INSURANCE—Notice of Premium Due.—Laws N. Y. 1877, ch. 321, providing that no life insurance company doing business in New York State shall have power to declare a policy forfeited or lapsed for non payment of any premium, unless notice stating the amount of such premium, the place where and person to whom the same is payable, shall first be given the assured, applies only to policies issued in the State of New York, and not to policies issued in other States by New York companies.—GRIESEMER V. MUTUAL LIFE INS. CO. OF NEW YORK, Wash., 38 Pac. Rep. 1031.

72. LIFE INSURANCE—Statements in Application.—An applicant for life insurance who, in answer to a question whether he had ever had any illness, stated that he had had throat trouble, was not bound to state more particularly the nature of the trouble, no further question being asked.—MUTUAL RESERVE FUND LIFE ASS'N V. SULLIVAN, Tex., 29 S. W. Rep. 190.

73. LIMITATIONS—Pleading.—Where, in an action on a contract, the petition fails to show that the contract was not in writing, a statute of limitations applicable to parol contracts only must be interposed by plea, and not by exception.—TINSLEY V. PENNIMAN, Tex., 29 S. W. Rep. 175.

74. LIMITATION OF ACTION.—The statute of limitations is not an unconscionable defense.—MORGAN V. MORGAN, Wash., 38 Pac. Rep. 1054.

75. LOGS AND LOGGING — Foreclosure of Lien.—An owner of logs upon which there is a valid lien cannot complain of a judgment decreeing a foreclosure thereof on the ground that certain other logs bearing the same brand have been intermingled with them by him.—CREIGHTON V. COLE, Wash., 38 Pac. Rep. 1007.

76. MANDAMUS.— The court of civil appeals has no power to issue a writ of *mandamus* requiring a county judge to try a pending cause.—FANNIN COUNTY V. HIGHTOWER, Tex., 29 S. W. Rep. 187.

77. MARRIED WOMAN'S SEPARATE PROPERTY.—Under the third paragraph of section 2 of article 11 of the constitution, a married woman's separate real or personal statutory property may be charged in equity and sold, or the uses, rents, and profits thereof sequestered, for the price of any property purchased by her, whether for material used, with her knowledge or assent, in the construction of buildings, or repairs or improvement, upon her property, or not.—HALLE V. EINSTEIN, Fla., 16 South. Rep. 554.

78. MASTER AND SERVANT—Duty as to Safe Place.—Though it is the duty of the master, in many cases, to exercise ordinary care in providing his servants with a reasonably safe place in which to discharge their several duties, he is not required to provide a safe place, in cases where the very work upon which the servant is engaged is of a nature to make the place where it is done temporarily insecure, but in such cases the servant assumes the increased hazard.—GULF, C. & S. F. RY. CO. V. JACKSON, U. S. C. C. of App., 65 Fed. Rep. 48.

79. MASTER AND SERVANT—Negligent Construction.—A custom of railroad companies to build their switches in a certain way is not evidence of want of negligence in a company following the custom, where the customary manner of building is in itself negligent.—AUSTIN V. CHICAGO, R. I. & P. RY. CO., Iowa, 61 N. W. Rep. 849.

80. MECHANIC'S LIEN—Sufficiency of Notice.—A notice of a lien claim, which sets out a special contract between the claimant and the contractor to furnish for a gross sum all material and work necessary to complete the painting of the building in accordance with the contract between the contractor and the owner, is sufficient to bind the owner, without stating the value of each item of material and work furnished.—SPEARS V. LAWRENCE, Wash., 38 Pac. Rep. 1049.

81. MINING LEASE — Royalties. — A lease of mineral land provided that the lessee should pay a royalty of one-tenth on the product of the mine, "delivered at the mine or shaft in shipping order, or accessible to wagons, or pay for the same the cost price of mining and delivering as above stated." For some time the ore was taken from the mines by hand shovels, loaded into wagons, and afterwards thrown on riddles, sifted, and weighed, such weight forming the basis of the payment of royalty. Later the lessees put in improved and expensive machinery to sift and wash the ore: Held, that the cost of such machinery did not enter into the cost of mining contemplated by the parties as the basis of the royalty.—NUNNELLY V. WARNER IRON CO., Tenn., 29 S. W. Rep. 124.

82. MONOPOLIES—Interstate Commerce—Sugar Trusts. —The purchase of stock of sugar refineries for the purpose of acquiring control over the business of refining sugar for sale in the United States does not involve a monopoly or combination in restraint of commerce among the States, within the prohibition of Act July 2, 1890.—UNITED STATES V. E. C. KNIGHT CO., U. S. S. C., 15 S. C. Rep. 249.

83. MORTGAGES—Release of Timber.—Where assignees of mortgages consent to, and receive the proceeds of, a sale by the mortgagors of timber on the mortgaged land, they cannot afterwards appropriate the timber on the mortgages.—FREDONIA NAT. BANK V. BORDEN, Penn., 20 S. E. Rep. 975.

84. MUNICIPAL CORPORATIONS—Change of Grade.—A city is not liable to an abutting owner for damages for change of grade of a way which it mistakingly assumed, on the passage of the ordinance, was a public street.—HUCKESTEIN V. CITY OF ALLEGHENY, Penn., 20 S. E. Rep. 982.

85. MUNICIPAL CORPORATION — Change of Street Grade.—Where an unauthorized change of grade is made by the agents of a city, it may adopt and ratify the work, and recover the expense of the owners of the property benefited.— IN RE GRADING OF SHILOH STREET, Penn., 20 S. E. Rep. 986.

86. MUNICIPAL CORPORATION—Board of Freeholders.—Under Const. art. 11, § 8, one who has not for five years

been a qualified voter of the city for which a charter is to be prepared is ineligible to a position on the board of freeholders chosen for that purpose.—PEOPLE V. HECHT, Cal., 38 Pac. Rep. 941.

87. MUNICIPAL PROPERTY—Exemption from Levy.—Where land owned by a city, and claimed by it to be exempt from execution, because used for burial purposes, has been owned by it for over 25 years, without anybody being buried therein, and has not been dedicated or appropriated for cemetery purposes by any city ordinance, it is not exempt, under Code, § 2514, providing that property belonging to a municipal corporation, and used for municipal purposes, shall be exempt from levy and sale.—MURPHREE V. CITY OF MOBILE, Ala., 16 South. Rep. 544.

88. MUNICIPAL CORPORATION — Negligence. — Where the proximate cause of an accident was the negligence of a city in failing to maintain a guard rail on a bridge the city is not relieved from liability because the horse which the injured person was driving was frightened by a passing engine, and back off the bridge, though, before meeting the train such person had crossed the bridge, and the horse backed on it again.—EADS V. CITY OF MARSHALL, Tex., 29 S. W. Rep. 170.

89. MUNICIPAL CORPORATION—Street Railroad Franchise.—Where for 14 years after the passage of an ordinance the city recognized its existence and validity, and treated it as duly adopted and published, it will be presumed to have been approved by the mayor and published as required by the city's charter.—SANTA ROSA CITY R. CO. V. CENTRAL ST. R. CO., Cal., 38 Pac. Rep. 986.

90. NATIONAL BANKS—Receiver.—Rev. St. U. S. § 5234, relating to receivers of national banks, requires them to collect all debts, dues, and claims, and, on the order of the court, to compound debts. Section 5242 declares void any application of the assets in preference of creditors after the commission of an act of insolvency, or in contemplation thereof: Held, that an act of a receiver of a national bank, in allowing a certificate of deposit issued by such bank as an offset to a note due the bank, signed by the holder of the certificate and another, was void, in the absence of an order of court authorizing it, where such certificate was transferred to such holder after the bank became insolvent.—BECKHAM V. SHACKELFORD, Tex., 29 S. W. Rep. 200.

91. NEGLIGENCE—Injury Caused by Horse.—Where a driver failed to use care to relieve his horse, who is entangled in a harness, whereby he ran away, the disposition of the horse was immaterial on the question of negligence.—WHISSLER V. WALSH, Penn., 20 S. E. Rep. 981.

92. NEGLIGENCE — Injury to Railroad Brakeman.—The fact that a railroad company maintains a bridge over its tracks so low as not to permit a brakeman standing on top of a freight train to pass under it in absolute safety constitutes, under ordinary circumstances, *prima facie* negligence.—LOUISVILLE & N. R. CO. V. BANKS, Ala., 16 South. Rep. 547.

93. NEGOTIABLE INSTRUMENT — Note — Alteration.—Where a person executing a note leaves a blank space after the printed words "payable at the bank of," it is no defense against a *bona fide* purchaser before maturity that some one, without his knowledge, and before the purchase, had filled in the space with the name of a bank.—WINTER V. POOL, Ala., 16 South. Rep. 543.

94. NEGOTIABLE INSTRUMENT — Surety on Note. — Where a person not the payee of the note, indorses it in blank before delivery by the maker, he is liable as surety.—BARTON V. AMERICAN NAT. BANK, Tex., 29 S. W. Rep. 210.

95. PARTNERSHIP—Accounting.—Under a bill for settlement of partnership account, the burden of proof is on plaintiff; and if he cannot furnish sufficient to establish a partnership, and also to enable the commissioner to state a partnership account, his suit necessarily fails.—HINKSON V. ERVIN, W. Va., 20 S. E. Rep. 849.

96. PARTNERSHIP—Authority.—An authority given by one member of a suspended banking firm to another member to use the firm name on renewals of its notes held by another bank should not be construed to limit its use to renewals of the particular notes in the possession of such other bank, but to continued renewals until the paper is paid.—FIRST COMMERCIAL BANK OF PONTIAC V. FALBERT, Mich., 61 N. W. Rep. 888.

97. PROHIBITION, WRIT OF—Appeal.—Pending appeal from a decision in an action for possession of land claimed under an administrator's sale, the decision being adverse to plaintiff, on the ground of want of jurisdiction of the court to order the sale, and of irregularities in the sale, the court will be prohibited from acting on a petition to vacate the sale, based on the same grounds as those urged against plaintiff's title in the action, and for the same purpose of defeating his title, the parties in interest being the same in the action and under the petition.—STATE V. SUPERIOR COURT OF WALLA WALLA COUNTY, Wash., 38 Pac. Rep. 998.

98. PUBLIC LANDS—Title.—L made application for a pre-emption entry, and some months later gave a mortgage on the land covered thereby. Six months thereafter he relinquished his pre-emption claim, and immediately filed a homestead entry on the same land: Held, that the mortgage was extinguished by the relinquishment, and did not attach to the homestead entry.—HEBERT V. BROWN, U. S. C. C. (Minn.), 65 Fed. Rep. 2.

99. RAILROAD COMPANY—Accident—Signal.—Rev. St. 1889, § 2698, requiring railroad crossings, and declaring that a failure to make them shall render the railroad company liable to any person injured at the crossing, warrants a finding for the injured person, notwithstanding his negligence, where it appears that obedience to the statute would have prevented the injury.—LLOYD V. ST. LOUIS, I. M. & S. RY. CO., Mo., 29 S. W. Rep. 153.

100. RAILROAD COMPANY — Street Railways—Negligence.—A person about to cross a street along which cars are propelled by electricity, having full appreciation that to do so he must act hastily or be run down, is guilty of negligence *per se*, if he rushes upon the track without listening or looking for the whereabouts of a car which he expects and knows is rapidly approaching the place of crossing.—HICKEY V. ST. PAUL CITY RY. CO., Minn., 61 N. W. Rep. 893.

101. RAILROAD COMPANIES — Use of Track as Pathway.—Where a railroad company permits the public to use its right of way for the purpose of travel, it is liable to one who, while crossing the right of way, is injured by a dangerous contrivance placed by the company at a point so used.—HANSEN V. SOUTHERN PAC. CO., Cal., 38 Pac. Rep. 957.

102. RAILROAD CROSSING ACCIDENT—Negligence.—An engineer who sees that the driver of a team rapidly approaching a crossing does not observe the approaching train, and that there will be a collision unless the team stops, is not negligent in giving signals when both are near the crossing, though the horses are frightened thereby.—PEPPER V. SOUTHERN PAC. CO., Cal., 38 Pac. Rep. 974.

103. RAILROAD CROSSING—Negligent Construction.—Under Rev. St. art. 4170, giving a railroad company the right to cross a street which its route intersects, but requiring it to restore the street to its former state, are to such state as not to unnecessarily impair its usefulness to the public, where it planks between its tracks for only part of the width of a street, and fills the remainder with sand, in which a spike is left projecting from a tie, it is liable for injury therefrom to one driving across.—DILLINGHAM V. FIELDS, Tex., 29 S. W. Rep. 214.

104. REAL ESTATE AGENT—Commissions.—In an action to recover commissions for a sale of real estate under a contract for payment thereof at a certain rate if certain facts were true and at another rate if other facts were true, and all the facts are peculiarly within

the knowledge of defendant, plaintiff may state his cause of action in different counts accordingly, and should not be compelled to elect on which he will proceed.—RUCKER v. HALL, Cal., 38 Pac. Rep. 962.

105. RELEASE — Consideration.—Where a woman's husband and her only son were killed in the same accident, and she was in such poverty that she had to give away her remaining child, a release of damages, made by her in ignorance of her rights, in consideration of $70 and a ticket worth $3.25, is of no effect.—BYERS v. NASHVILLE, C. & ST. L. RY. CO., Tenn., 29 S. W. Rep. 128.

106. RES JUDICATA—Injunction against Street Railway Company.—A judgment for defendant, rendered by the Federal Circuit Court of Appeals, in an action by a city to enjoin the operation of a street railway company, because the company was operating the road without the consent of the local authorities, is conclusive of the sufficiency of the consent of the local authorities on an application by the city and certain of its citizens for an order to show cause why the attorney general of the State should not file an application in the nature of a *quo warranto* to inquire by what right the company maintained its railway in the streets of the city.—CITY OF DETROIT v. ELLIS, Mich., 61 N. W. Rep. 886.

107. SALE — Conditional Sale.—Where a bill of sale recites that property is thereby "bargained, sold, and delivered," and that, if a certain note given for a part of the purchase price of the property is paid as specified, "then this bill of sale is to be valid; otherwise void,"—the sale is conditional, though the property is delivered to the vendee.—EDGEWOOD DISTILLING CO. v. SHANNON, Ark., 29 S. W. Rep. 147.

108. SALE — Conditional Sale.—Where the sale of a stock of goods was conditioned upon the payment at maturity of a note given for the price thereof, and the bill of sale evidencing it, together with the note and its collateral, were deposited with a third party, to be delivered only upon payment by the vendee, which payment was never made, it is no defense to an action of replevin, by one who subsequently purchased from the vendor, against the officer who seized the goods under attachments against the vendee, that the vendor allowed the vendee to participate in making sales from the goods, and to put a sign in his own name upon the store.—MCDONALD v. HALLICY, Colo., 38 Pac. Rep. 993.

109. SCHOOL DISTRICT—Action to Enjoin Collection of Taxes.—In an action against a county treasurer and the trustees of a school district, to enjoin a special tax levied by such district, a complaint which alleges facts which, if true, show that such district never had any legal existence, states a cause of action.—GREEN MOUNTAIN STOCK RANCHING CO. v. SAVAGE, Mont., 38 Pac. Rep. 940.

110. SPECIFIC PERFORMANCE — Remedy at Law.—Specific performance being bottomed on inadequacy of the remedy at law, the fact that a particular case belongs to a class of cases in which specific performance is granted, is conclusive that the remedy by damages is inadequate.—PAYNE v. STILL, Wash., 38 Pac. Rep. 994.

111. STATUTES—Act of Congress — Variance.—If there is any variance between an act of congress as found in the printed volume of statutes and the original, as enrolled and deposited with the secretary of State, the latter will prevail.—MCLAUGHLIN v. MENOTTI, Cal., 38 Pac. Rep. 973.

112. SUNDAY — Opening Barber Shop.—Under Pen. Code, § 211, making it unlawful "to open on Sunday for the purpose of trade or sale of goods, wares and merchandise, any shop, store, or building, or place of business whatever," a barber cannot be convicted for opening his shop and plying his vocation on Sunday.—STATE v. KRECH, Wash., 38 Pac. Rep. 1001.

113. TAXATION—Assessment.—Under Mill. & V. Code, § 664, providing that if the owner of assessed property admit its liability to taxation, but dispute the amount of the assessment, he may have a revaluation, where an owner fails to obtain such revaluation the assessment becomes final as to valuation.—STATE v. TENNESSEE COAL, IRON & RAILROAD CO., Tenn., 29 S. W. Rep. 116.

114. TAXATION OF SAVINGS BANKS.—Surplus moneys and credits of a savings bank are taxable as a part of "the paid up capital," under Acts 15th Gen. Assem. ch. 60, § 28, providing that "the paid up capital of all savings banks" shall be subject to taxation.—IOWA STATE SAV. BANK v. CITY COUNCIL OF BURLINGTON, Iowa, 61 N. W. Rep. 851.

115. TELEGRAPH COMPANIES—Privilege Tax.—A State privilege tax of a certain amount per mile of wires operated within the State, imposed on all telegraph companies therein operating, in lieu of all other State, county, and municipal taxes, and amounting to less than the ordinary *ad valorem* tax, is substantially a mere tax on property, to which a foreign corporation operating within the State is subject, notwithstanding it is engaged in interstate commerce, and has accepted the rights conferred on telegraph companies by Rev. St. § 5263.—POSTAL TELEGRAPH CABLE CO. v. ADAMS, U. S. S. C., 15 S. C. Rep. 268.

116. TENANCY IN COMMON — Adverse Possession.—Where one tenant has sole possession of the common property, it is presumed to be with the consent of his cotenants.—MILBOURN v. DAVID, Del., 20 S. E. Rep. 971.

117. TRUST—Following Trust Funds.—A trust creditor claiming a lien on funds in the hands of his debtor's receiver, must show that the funds sought to be charged include the trust fund.—MUHLENBERG v. NORTHWEST LOAN & TRUST CO., Oreg., 38 Pac. Rep. 932.

118. USURY—National Bank.—The payment of a usurious loan made by a national bank is not a condition precedent to the right of the borrower to maintain an action against such bank to recover double the amount of usurious interest paid by such borrower to such bank on such loan.—EXETER NAT. BANK v. ORCHARD, Neb., 61 N. W. Rep. 833.

119. VENDOR AND VENDEE—Sale of Land—Forfeiture.—Under a contract for sale of land providing for forfeiture in case the purchaser failed to make any of the partial payments, the vendor, before bringing ejectment for the land for failure to make a payment, is not obliged to tender a deed, where conveyance was not to be made till final payment, which was not yet due.—REDDISH v. SMITH, Wash., 38 Pac. Rep. 1003.

120. WATERS — Riparian Rights—Ownership of Sand Bar.—Where islands in a river are submerged during the greater part of the year, the fact that the owner of land on one side of the river, opposite the islands, hauls sand from them at intervals for over 20 years, does not constitute possession adverse to a riparian owner, whose deed includes the islands, although such possession was as complete as the character of the land would allow.—STRANGE v. SPAULDING, Ky., 29 S. W. Rep. 137.

121. WILL — Charge on Land.—A will gives several pecuniary legacies, and then gives a sum of money to three children, and then gives "the residue of my estate, real and personal," to a brother and three sisters, and appoints that brother its executor. Such will creates a charge on the land for the legacy to those children.—BIRD v. STOUT, W. Va., 20 S. E. Rep. 852.

122. WILLS—Power to Executor—Sale of Land.—Testatrix vested in "my executor, hereinafter named," as full power to dispose of her real estate as she had when living: Held, that the power was not a personal one, but that the administrator with the will annexed could execute it, under 2 How. St. § 5840, providing that such administrator shall proceed, in all things, to execute the trust in the same manner that an executor would be required to do.—GREEN v. RUSSELL, Mich., 61 N. W. Rep. 885.